



Task Force on Transparency and Privacy in Court Records

TO: Members of TAP Committee
FROM: Jack Baldacci, Esq., Laura O'Hanlon, Esq., and Alyson Cummings
RE: Analysis of Maine Confidentiality Statutes, Court Rules, and Administrative Orders
DATE: May 15, 2017

We have reviewed and updated the Judicial Branch's "master list" of Maine statutes governing information and confidentiality originally created for the Task Force on Electronic Record Access,¹ and created a new list of Court Rules and Administrative Orders. Utilizing these documents, we have undertaken an analysis to ascertain and to highlight the commonalities existing among the respective authorities. The outline contained in Attachment A synthesizes information that is frequently made confidential into broader categories. It is important to note that all categories can be further broken down, for example, the broad category of financial information can be broken down into the sub-categories of (1) tax returns, (2) credit reports, (3) credit card numbers, and (4) bank account numbers.

In addition, Attachment B incorporates the categories listed in Attachment A and the categories deemed confidential as a matter of policy by prior Judicial Branch Task Forces² to provide the Committee with a "short list" of categories of information made confidential by Maine Statute, Court Rule, Administrative Order, or as a matter of policy. Please note that both Attachments emphasize the type of information being collected as opposed to the context in which the information was collected. For example, Social Security Numbers are deemed confidential in a variety of different contexts, *see, e.g.*, 8 M.R.S. § 1006 (Social Security

¹ We appreciate the information provided by the Office of Policy and Legal Analysis, which was of great assistance in updating our own research.

² The referenced Maine Judicial Branch Task Forces are the Task Force on Electronic Court Record Access ("TECRA") group, and the TECRA Implementation Group ("TIG"). TECRA was established by Charter in June 2004, and issued a final report in September, 2005. TIG was established by Charter in October, 2007.



Task Force on Transparency and Privacy in Court Records

Numbers submitted to the Gambling Control Board), however, only the fact that Social Security Numbers were deemed confidential is reflected in both Attachments and not the fact that the Social Security Numbers were submitted to the Gambling Control Board.

Both the Criminal History Records Information Act and the Intelligence and Investigative Record Information Act have their own category, as the nature and complexity of those statutory provisions will likely require individualized attention from Members of the Committee. To help guide Committee Members, we have provided references to case law and urge Committee Members to refer and to rely upon “*Behind the Courthouse Door: The Legal Landscape of Transparency and Privacy*.”

Please also note that the categories of information detailed in both Attachments reflect common types of information made confidential and do not constitute or attempt to capture all information made confidential. Also, the broad categories of information were designed to be as all-encompassing as possible to prevent and to mitigate the likelihood that, due to the volume of material condensed, statutory provisions, rules, or administrative orders were overlooked. With the inclusion of broad categories, it is hoped that any oversight will be nominal, because the overlooked information would have likely fallen into one of the existing broad categories.

Given the expansive nature of the categories, many have a significant number of subcategories that are, in themselves, large and general categories of information. For example, the broad category of proprietary information includes investigative records and privileged material. The creation and combination of different categories and subcategories reflect our attempt to provide a truly “short list” of categories of information commonly made confidential and to not overwhelm Committee Members with a lengthy list of categories of information.

ATTACHMENT A:
Categorization of Statutory Provisions Relating to Confidential Information

After a review of the pertinent Maine Statutes, Court Rules, and Administrative Orders related to confidential information, the following outline categorizing the information into broad categories was created:

Criminal History Record Information Act. 16 M.R.S. §§ 701-710; *see Maine Today Media, Inc. v. State*, 2013 ME 100, 82 A.3d 104 (discussing the Criminal History Record Information Act).

Employee Records and Applicant Information. 5 M.R.S. § 7070 (race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, and marital status); 5 M.R.S. § 17057 (race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, and marital status); 20-A M.R.S. § 6101 (relating to school employee records); 26 M.R.S. § 631 (employee records); 30-A M.R.S. § 2702 (relating to municipal employees); 35-A M.R.S. § 114 (utility employee information).

Financial Information. 1 M.R.S. § 402 (credit or financial information); 5 M.R.S. § 13119-A (tax return, financial statement, and credit assessment); 5 M.R.S. § 15302-A; 7 M.R.S. § 606; 8 M.R.S. § 416-A; 9-A M.R.S. § 6-116; 10 M.R.S. § 391; 12 M.R.S. § 8869; 14 M.R.S. § 6321-A; 22 M.R.S. § 3188; 24-A M.R.S. § 6907 (in the hands of Dirigo Health); 28-A M.R.S. § 755 (submitted by liquor licensees); 30-A M.R.S. § 4706 (information received by the Maine State Housing Authority); 32 M.R.S. § 6115 (information in the possession of the Department of Professional and Financial Regulation); 35-A M.R.S. § 704 (credit history); 30-A M.R.S. § 4706 (financial condition); 36 M.R.S. § 191 (tax records); 36 M.R.S. § 6760 (financial statements, credit reports, or tax returns); M.R. Prob. P. 92.12 (Social Security Numbers, and banking and brokerage account numbers).

Intelligence and Investigative Record Information Act. 16 M.R.S. §§ 801-809; *see Maine Today Media v. Me. State Police*, No. AP-14-41, 2014 Me. Super. LEXIS 173, at *3-4 (Sept. 12, 2014) (discussing the Intelligence and Investigative Record Information Act).

Judicial Proceedings. 4 M.R.S. § 183(1)(D) (relating to requests for access to confidential child protective records.); 14 M.R.S. § 1254-A (Juror names); 14 M.R.S. § 1254-B (relating to the Juror selection process); 15 M.R.S. § 101-C (relating to records required to conduct a mental health evaluation); 15 M.R.S. §§ 2253, 2254 (relating to convictions for certain Class E crimes not involving sexual assault); 15 M.R.S. § 3308 (juvenile proceedings); 18-A M.R.S. §§ 9-101 to 9-404 (relating to adoption records filed with the Court);³ 22 M.R.S. § 4007 (child protection proceedings); 24 M.R.S. § 2853 (notice of claim and all documents relating to actions for professional negligence); 24 M.R.S. § 2857 (relating to medical malpractice screening panel proceedings and findings); 24-A M.R.S. § 4406 (relating to summary proceedings involving insurers); 34-B M.R.S. §§ 3864, 5475, 5476 (mental health proceedings); 34-B M.R.S. § 7014 (relating to sterilization proceedings); 35-A M.R.S. § 114 (sterilization proceedings). M.R. Civ. P. 80M(g)(10) (medical malpractice screening panel proceedings); M.R. Civ. P. 102 (relating to

³ These records relate to Probate proceedings. While we do not envision that the SJC will make recommendations expressly about probate records, we have provided those for informational purposes.

ATTACHMENT A:
Categorization of Statutory Provisions Relating to Confidential Information

requests for confidentiality in Family Matter cases); M.R. Civ. P. 108(d) (relating to financial statements filed with the Court for the purposes of child support determinations); M.R. Civ. P. 80M(g)(10) (medical malpractice screening panel proceedings); *see* M.R. Civ. P. 133(c) (relating to the procedural mechanism utilized in the Business and Consumer Docket for making documents confidential); M.R.U. Crim. P. 6(e) (Grand Jury proceedings); M.R. Evid. 514 (relating to records created during mediation); M.R. Prob. P. 92.12 (records relating to adoption proceedings, Certificates of Value, and physicians' and psychologists reports, and any record designated confidential by the Probate Court); M.R. G.A.L. 5 (relating to information concerning guardian ad litem cases); M.R. G.A.L. 9 (relating to guardian ad litem disciplinary proceedings); M.R. Comm. Jud. Responsibility & Disability 6 (proceedings before the Commission on Judicial Responsibility and Disability); M. Bar R. 7(h) (all proceedings and records of the Free Arbitration Commission, except for the award itself); M. Bar R. 8(f), (g) (all proceedings, records, documents, and other information of the Professional Ethics Commission, except for the advisory opinion); M. Bar Admission R. 9A(d) (the fact that an individual is conditionally admitted and the terms of a conditional admission consent agreement); M.R. Assistance Program for Lawyers 8A, 8B (actions and information taken by MAP); M.R. Lawyers' Fund for Client Protection 17 ("Claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant."); Standing Order Impounding Certain Private Images (any image, including photograph, videotape, film, or digital recording submitted in certain criminal proceedings and protection from abuse proceedings). *See* AO JB-05-20 (governing current public access to Court files); *see also* AO JB-05-11 (also addressing current access to Court files). *See also* **Juvenile Records**.

Juvenile Records. 1 M.R.S. § 402; 15 M.R.S. §§ 3001-3009 (case records concerning juvenile offenses); 18-A M.R.S. § 9-308 (relating to adoption decrees); 18-A M.R.S. § 9-310 (Probate Court records relating to an adoption after August 8, 1953); 22 M.R.S. § 2706-A (adoption contact files); 22 M.R.S. §§ 4001 to 4099-H (child protection matters); Emancipation records.⁴

Medical Records. 1 M.R.S. § 402 (pertaining to the diagnosis and treatment of mental or emotional disorders); 5 M.R.S. § 200-E; 5 M.R.S. § 4572; 5 M.R.S. § 4573 (records regarding physical or mental disabilities); 5 M.R.S. § 7070; 5 M.R.S. § 17057; 5 M.R.S. § 19203-D (HIV status); 5 M.R.S. § 20047 (regarding the registration and other records of substance abuse treatment facilities); 20-A M.R.S. § 4008 (relating to school counseling records); 20-A M.R.S. § 6357 (immunization records); 22 M.R.S. § 1711-C (relating to health care information); 22 M.R.S. § 3188; 25 M.R.S. § 1577 (DNA records); 30-A M.R.S. § 4353 (covering medical records submitted to a town's zoning board of appeals); 34-A M.R.S. § 1216 (orders of commitment and medical records); 34-B M.R.S. § 1207 (orders of commitment and medical records); 35-A M.R.S. § 704 (medical conditions); M.R. Evid. 503 (statements made to Health Care Professionals for the purpose of diagnosing or treating the patient's physical, mental, or emotional condition).

Personal Information. 1 M.R.S. § 402; 4 M.R.S. § 1806 (email addresses, telephone numbers, and residential addresses); 5 M.R.S. § 244-E(2); 5 M.R.S. § 7070 (email addresses, telephone

⁴ Please note that there were no statutes expressly protecting the confidentiality of records related to "emancipation." However, the subcategory of emancipation was included to provoke both discussion and deliberation as to whether records relating to emancipation should be made confidential as a matter of policy.

ATTACHMENT A:
Categorization of Statutory Provisions Relating to Confidential Information

numbers, and Social Security Numbers); 5 M.R.S. § 13120-M (applications for financial assistance); 5 M.R.S. § 17057(email addresses, telephone numbers, and residential addresses); 8 M.R.S. § 1006 (telephone numbers, birth dates, Social Security Numbers, and residential addresses); 12 M.R.S. § 8005 (email addresses, telephone numbers, Social Security Numbers, and residential addresses); 12 M.R.S. § 8611 (email addresses, telephone numbers, and residential addresses); 12 M.R.S. § 10110 (email addresses); 17-A M.R.S. § 1176 (relating to a crime-victim's current address or location); 19-A M.R.S. § 908 (Social Security Numbers submitted to the Court during a divorce proceeding); 19-A M.R.S. § 1653 (address of child and victim of domestic violence); 19-A M.R.S. § 2006 (Social Security Numbers disclosed to the Court as part of child support proceedings); 19-A M.R.S. § 3012 (relating to the disclosure of personal information that would put the health, safety, or liberty of a party or child at risk); 20-A M.R.S. § 6101(Social Security Numbers contained within school employee records); 22 M.R.S. § 17(Social Security Numbers related to child support obligors); 22 M.R.S. § 4306 (relating the receipt of municipal general assistance); 30-A M.R.S. 4706 (addresses of victims of domestic violence); 32 M.R.S. § 91-B (email addresses, telephone numbers, and residential addresses); 32 M.R.S. § 7032 (addresses of social workers); 32 M.R.S. § 8124 (telephone numbers and residential addresses); 32 M.R.S. § 16607 (telephone numbers, Social Security Numbers, and residential addresses); 34-A M.R.S. § 1212 (telephone numbers and residential addresses); 36 M.R.S. § 581-G (email addresses, telephone numbers, and residential addresses); 37-B M.R.S. § 506 (records of veteran claims for benefits); M.R. Evid. 504 (relating to confidential spousal communication); M.R. Evid. 505 (relating to confidential religious communications); M. Bar R. 1(g) (information pertaining to members of the Maine Bar that the Board has deemed confidential); AO JB-09-2 (Social Security Numbers and Qualified Domestic Relations Orders).

Proprietary Information. 1 M.R.S. § 402 (legislative work papers and documents relating to security procedures, architectural and information technology design plans for the purposes of preventing possible terrorist attacks, and privileged material); 1 M.R.S. § 1013 (legislative ethics investigations); 3 M.R.S. § 997 (work papers); 4 M.R.S. § 17 (complaints and investigative files that relate to Court and judicial security); 4 M.R.S. § 1701(7) (work papers); 4 M.R.S. § 1806(2)(B) (privileged material); 5 M.R.S. § 244-C (audit working papers); 5 M.R.S. § 1541(work papers); 5 M.R.S. § 1976 (trade secrets); 5 M.R.S. § 4612 (Human Rights Commission investigations); 5 M.R.S. § 7070-A (pertaining to investigations involving Police Officers); 5 M.R.S. § 13119-A; 5 M.R.S. § 15302-A(2)(C); 7 M.R.S. § 606; 8 M.R.S. § 1006; 8 M.R.S. § 1052(3); 9-B M.R.S. § 226; 10 M.R.S. § 391; 10 M.R.S. § 945-J; 10 M.R.S. § 8003-B; 10 M.R.S. § 9012; 12 M.R.S. § 8869; 18-A M.R.S. § 9-304 (background checks conducted by the Department of Health and Human Services); 20-A M.R.S. § 4008 (privileged material); 20-A M.R.S. § 6101(2); 21-A M.R.S. § 1003; 22 M.R.S. § 3474 (relating to adult protective services records); 22 M.R.S. § 4019; 23 M.R.S. § 4251(10-A)(A) (trade secrets); 24-A M.R.S. § 2483; 25 M.R.S. § 2957 (Maine Drug Enforcement Agency investigative records); 30-A. M.R.S. § 5242 (proprietary information relating to state tax increment financing); 32 M.R.S. § 3292 (professional competence reviews conducted by the Board of Licensure of Medicine); 32 M.R.S. § 16607 (trade secrets submitted to the Securities Administrator); 35-A M.R.S. § 9207 (proprietary information relating to communication service providers); 36 M.R.S. § 706; 37-B M.R.S. § 800 (trade secret); 38 M.R.S. § 580-B; 38 M.R.S. § 1776 (proprietary information submitted in a product stewardship plan); 38 M.R.S. § 2144; 39-A M.R.S. § 153 (worker's compensation investigations); M.R. Civ. P. 26 (privileged material); M.R. Evid. 408(b) (relating

ATTACHMENT A:
Categorization of Statutory Provisions Relating to Confidential Information

to information protected by the work product doctrine); M.R. Evid. 502 (relating to information protected by the lawyer-client relationship); M.R. Evid. 507 (relating to trade secrets); M.R. Evid. 508 (relating to state secrets or other official information); M.R. Evid. 509 (relating to the identity of police informants); M.R. Prof. Conduct 1.6 (client confidences or client secrets); M.R. Prof. Conduct 4.4 (inadvertent disclosures); M. Bar R. 2(c) (advisory opinions issued by Bar Counsel); M. Bar R. 6(d)(2) (investigations relating to the lawyer's maintenance of trust accounts); AO JB-15-1 (Court security information and files).

ATTACHMENT B:
**Broad Categorization of Statutory Provisions Related to Confidential Information with the
Addition of Previous Task Force Policy Recommendations**

Short List:

Incorporating the previous Judicial Branch Task Forces recommendations within the broad categories of information outlined above, a comprehensive Judicial Branch list of protected information contained within Maine Statutes, Court Rules, and Administrative Orders is set forth below:

1. Criminal History Record Information Act.
2. Employee Records and Applicant Information.
 - Race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status.
3. Financial Information.
 - Bank account numbers;
 - Credit reports;
 - Credit card numbers (including PIN number);* ⁵
 - Tax returns.
4. Intelligence and Investigative Information Act.
5. Judicial Proceedings.
 - ADA requests for accommodation submitted to the Court.*
 - Addresses of witnesses;
 - Case records concerning juvenile offenses;
 - Case records concerning child protection matters;
 - Case records concerning termination of parental rights matters;
 - Case records concerning adoption records;
 - Case records for guardianships of minors;+⁶
 - Case records for guardianships of incapacitated persons;+
 - Case records concerning the protection of property of minors or incapacitated persons;+
 - Child protection proceedings;
 - Custody studies;*
 - Certain criminal conviction data relating to Class E crimes, but not involving sexual assault;
 - Grand Jury proceedings;
 - Non-felony juvenile proceedings;
 - Impounded warrants;

⁵ * denotes records that were recommended to be classified as confidential as a matter of policy.

⁶ + refers to records that are made confidential under the proposed amendments to M.R. App. P. 5A.

ATTACHMENT B:
**Broad Categorization of Statutory Provisions Related to Confidential Information with the
Addition of Previous Task Force Policy Recommendations**

- Involuntary commitments;
- Juror notes;*
- Juror personal information;
- Medical malpractice screening panel records;
- Pre-sentence investigations;
- Qualified Domestic Relations Orders.

6. Juvenile Records.

- Adoption records;
- Names and addresses of juvenile victims of sex crimes;
- Names of minors in M.R. Civ. P. 17A settlements;*
- Emancipation records.*

7. Medical Information.

- DNA records;
- Immunization records;
- Medical records;
- Mental health records;
- School counseling records;
- Substance abuse treatment records.

8. Personal Information.

- Applications for general assistance;
- Birth dates;
- Driver's license and vehicle identification numbers;*
- Personal E-mail addresses;
- Personal telephone numbers;
- Residential addresses;
- Social Security numbers;
- Wills.

9. Proprietary Information.

- Information that would provide another with a competitive advantage;
- Investigative records and complaints;
- Privileged material;
- Security procedures, architectural and information technology design plans;
- State secrets;
- Trade secrets;
- Work papers;
- Work-product protected documents.